

DAVID J. TERRY

VS.

Respondent

AND

Insurance Carrier

The preliminary hearing Order entered by the Administrative Law Judge should be affirmed.

Claimant alleged he sustained a work-related accident on July 23, 1996, while pulling weeds. Respondent presented three witnesses at preliminary hearing who contradicted claimant's testimony. Respondent's witnesses indicated that claimant did not report a work-related back injury as alleged but, instead, testified that claimant reported he hurt his back at home. Claimant also has a history of previous back complaints.

The Administrative Law Judge was in the enviable position of personally observing the preliminary hearing witnesses and, therefore, able to assess their demeanor and credibility. In this instance, the Appeals Board gives some deference to the Administrative Law Judge's opinion of the witnesses' credibility. For preliminary hearing purposes, the Appeals Board agrees with the Judge's conclusion that claimant failed to prove he sustained personal injury by accident arising out of and in the course of employment.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order dated November 6, 1996, entered by Administrative Law Judge Steven J. Howard should be, and hereby is, affirmed.

IT IS SO ORDERED.

Dated this ____ day of December 1996.

BOARD MEMBER

c: Timothy M. Alvarez, Kansas City, MO
Heather Nye, Kansas City, MO
Steven J. Howard, Administrative Law Judge
Philip S. Harness, Director